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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,156	02/19/2002	Olaf Jose F. Hirsch	US 028003	9302

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EXAMINER	
ELALLAM, AHMED	
ART UNIT	**PAPER NUMBER**
2616	

NOTIFICATION DATE	DELIVERY MODE
03/07/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip.department.us@nxp.com

Office Action Summary	Application No.	Applicant(s)	
	10/080,156	HIRSCH ET AL.	
	Examiner	Art Unit	
	AHMED ELALLAM	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 February 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 1-20 are objected to because of the following informalities:

In independent claims 1,12, and 20, the term "capable of " is used to indicate the capability of performing a given function by the first and/or second station. The term "capable of" suggest or make the limitations following optional but does not requires the steps to be performed. See MPEP 2111.04 [R-3]. According to MPEP 2111.4 Claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. Therefore appropriate correction is required.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-4, 8-14,16, 18, 19 and 20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12-22 of U.S. Patent No. 7,274,707. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

As to claims 1-4, 11-14 and 20, the difference between these claims and patented claims 12-22, is that patented claims do not specify a distributed coordination function for the data transmitted by the second station. However, since the second station transmit during a contention sub-period, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use distributed coordination function as dictated by 802.11 standard. The advantage would be the implementation of DCF during contention and PCF (point coordination function) so to comply with the established wireless LAN Protocols.

As to claims 8, 9, 10, 16-19. Examiner takes official notice that the limitations in these claims are standard feature of the wireless LAN standards. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the signaling feature as recited in the claims so to comply with the established IEEE 802.11 specification standards.

4. Claims 5-7 and 15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 7,274,707 in view of Young et al, US 6,990,116.

Regarding claims 5-7 and 15, patented claim 12 does not specify the access point dynamically adjusts the duration of the sub-contention period (as in claim 5 and 15), or adjusting the duration of the sub-contention period based on respective bandwidth requirements of the first and second stations (as in claim 6) or respective numbers of devices using the first and the second modulation schemes, as in claim 7.

However, Young discloses having the access point dynamically adjust the appropriate access mechanism (DCF or PCF) (point coordination function or Distributed coordination function) based on load conditions, including the number of stations, see column 8, lines 47-67 and column 9, lines 1-10, see also figure 6. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to add the adjust the contention sub-period of claim 12 of the patent as taught by Young so shape the traffic and to increase the throughput of applicant system.

Response to Arguments

5. Applicant's arguments, see Remarks, filed 12/28/2007, with respect to claims 1, 12, and 20 have been fully considered and are persuasive. The rejections of claims 1, 12 and 20 under Young in view APA (Admitted Prior Art) have been withdrawn.

Also the Amendment to claims 1, 12 and 20 overcame the 112 second paragraph rejections.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure See Form PTO 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AHMED ELALLAM whose telephone number is (571)272-3097. The examiner can normally be reached on 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AHMED ELALLAM
Examiner
Art Unit 2616
3/3/08

HASSAN KIZOU
SUPERVISORY PATENT EXAMINER
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